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| APPLICATION NO.  | FILING DATE   | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |            |       |                       |  |
|--|---------------|---|---|------------------|------------|-------|-----------------------|--|
| 10/829,409   | 04/20/2004    | Jon P. Hassell  | 3176 PUS  | 5961             |            |       |                       |  |
| 7590<br>Konstantine J. Diamond<br>4010 E. 26th Street<br>Los Angeles, CA 90023 |               | 06/15/2007  | <table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">ELOSHWAY, NIKI MARINA</td></tr></table> |                  | EXAMINER   |       | ELOSHWAY, NIKI MARINA |  |
| EXAMINER   |               |   |   |                  |            |       |                       |  |
| ELOSHWAY, NIKI MARINA  |               |   |   |                  |            |       |                       |  |
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| 3781   |               |   |   |                  |            |       |                       |  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

**Office Action Summary****Application No.**

10/829,409

**Applicant(s)**

HASSELL ET AL.

**Examiner**

Niki M. Eloshway

**Art Unit**

3781

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,7-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,7-14 is/are allowed.
- 6) ☒ Claim(s) 15-26 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15-26 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 15 and 20 recite the limitation "the bottle contact portions" in line 8. There is insufficient antecedent basis for this limitation in the claims.

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15, 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by McGrath (U.S. 6,082,542). McGrath teaches a nestable bottle crate 11A having a floor portion 12, a peripherally extending upper band portion at 18 with first portions at 26 and second portions at 27 and 30. The nesting projections are elements 27. The lower wall has columns at 22. The nesting projections at 27 are received into the outer surface of columns 22. The ledge is the surface at 31.
5. Claims 15-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. (U.S. 6,892,885). Apps et al. teach a nestable bottle crate 10 having a floor portion 12, a peripherally extending

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upper band portion at 14 with first portions at 21 and second portions at lead line 64. The nesting projections are the inwardly projecting elements at 64. The lower wall has columns at 16. The nesting projections are received into the outer surface of columns 16. The ledge is the surface at 65.

***Allowable Subject Matter***

6. Claim 1, 2, 7-14, 20-26 and 28 are allowed.

***Conclusion***

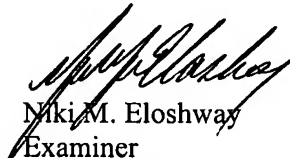
7. In view of the new ground(s) of rejection presented in this Office action, **THIS ACTION IS MADE NON-FINAL.**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloschway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Niki M. Eloshway  
Examiner  
Art Unit 3781

nme



ANTHONY D. STASHICK  
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